(TR 1902-1904; TR 3165) Thus, BST believes that there may be ALECs in this proceeding that have made requests that do not qualify under Track A because of the lack of any indication that they will be providing service to residential or business customers in the future. (BR p.17)

However, as discussed in Issue 1A, MCI, TCG, ICI, and Sprint assert that they are facilities-based ALECs that are currently providing local exchange service to business subscribers in Florida, either entirely over their own facilities or in combination with unbundled elements purchased from BellSouth. (Gulino TR 3166; EXH 123; Kouroupas TR 3514; Strow TR 2471-2475; Closz TR 2607) As discussed in Issue 1A, several competitors assert they intend to serve residential customers in Florida through their own facilities or in combination with unbundled elements purchased from BST in the future. (Gulino TR 3165-3166; Sprint EXH 89, p.49) In fact, MCI, AT&T and MediaOne are currently serving residential customers on a test basis in Florida. (MCI EXH 112; EXH 87, p.2; Hammon TR 2776)

As of May 30, 1997 BST had entered into 55 local interconnection agreements in Florida which for the most part have been approved by this Commission. (Varner TR 108) In addition, BST has entered into arbitrated interconnection agreements in Florida with MCI, MFS, AT&T, and Sprint that have been approved by this Commission pursuant to Section 252 of the Act.(EXHs 12-15) Based on the record in this proceeding, there are at least four carriers who currently serve business subscribers exclusively over their telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with resale. In addition, there are at least three carriers that have provided testimony in this proceeding regarding their intent to provide service to residential customers over their own facilities. Staff believes that the evidence provided in this proceeding demonstrates that businesses are currently being provided local exchange service and that there are competing carriers in Florida that intend to provide local exchange service to residential customers. Thus, staff believes that BST's argument that ALECs in this proceeding may not "qualify" under Track A because of the lack of intent to provide facilities-based service to residential or business customers is without merit.

There are two instances where Section 271(c)(1)(B) may remain open to a BOC even if a "qualifying request" has been received. These instances are if a state Commission determines that competitors negotiated in bad faith, or violated an implementation schedule set forth in an interconnection agreement. AT&T and MCI assert that BST provided no evidence to demonstrate that any new entrant negotiated in bad faith or violated any implementation schedule. (AT&T BR p.13; MCI BR p.12)

BST has made no allegations that any of these carriers have negotiated in bad faith or have failed to abide by their implementation schedules. (Varner TR 276) Witness Varner asserts that other than some implied intent to offer service when entering into an agreement, there are no implementation schedules in any of the interconnection agreements entered into by BST with competing carriers. (TR 303) Furthermore, BST provided no specific allegations that any competing providers have failed to comply with an implementation schedule based on an implied intent. (Varner TR 303) Witness Varner also asserted that he does not believe that any ALEC in Florida has negotiated in bad faith. (TR 276) Thus, staff believes that the evidence in this proceeding indicates that BST has received requests from potential competitors for access and interconnection to BST's network that, if implemented, will satisfy the requirements of Section 271(c)(1)(A).

1(B)(b) **Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?**

This Commission has neither approved a SGAT that BST generally offers to provide access and interconnection, or allowed one to take effect pursuant to Section 252(f). BST filed a draft SGAT as an exhibit to witness Scheye's testimony. (EXH 24) BST contends that given the wording of this issue, and the circumstances surrounding the development of the wording, the literal answer to this issue would be "No." (BR p. 12) The intervenors all agree that while BST submitted a SGAT to the Commission for approval, the SGAT has neither been approved nor permitted to take effect. (TCG BR p.5; FCTA BR p.15; MFS BR p.9; Sprint BR p.3; MCI BR p.14 ; FCCA BR p.38; AT&T BR p.14; ICI BR p.17)

Staff would point out that this issue does not provide a recommendation as to whether BST's proposed SGAT complies with Section 252(f), or whether this Commission should consider BST's SGAT for approval. However, staff would note that Issue 18A in this recommendation considers whether or not BST's proposed SGAT complies with Section 252(f).

ISSUE 1C: Can BellSouth meet the requirements of section 271(c)(1)through a combination of track A (Section 271(c)(1)(A) and track B (Section 271(c)(1)(B)? If so, has BellSouth met all of the requirements of those sections? **(Barone)**

RECOMMENDATION: No, BellSouth cannot meet the requirements of Section 271(c)(1)through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B)). Further, staff recommends that BellSouth should be permitted to use a state approved SGAT to show that checklist items are available. BellSouth, however, is not eligible to do so at this time.

POSITION OF THE PARTIES

ACSI: No. BellSouth must meet the requirements through one or the other.

AT&T: No. Section 271(c)(1) specifies that a BOC may attempt to show checklist compliance through one or more interconnection agreements [Track A] or an SGAT [Track B]. Track A and Track B are mutually exclusive; the existence of qualifying interconnection requests under Track A rules out Track B. BellSouth, however, has attempted to comply with section 271(c) by showing that it has "provided" some checklist items pursuant to Track A interconnection agreements and has "offered" to provide other checklist items in a Track B SGAT.

BST: No. BellSouth cannot combine Track A and Track B. BellSouth can, however, utilize the Statement to demonstrate that checklist items are available even if it elects to file with the FCC an application for authority pursuant to Track A.

FCCA: No. Track A and Track B are mutually exclusive.

FCTA: No. Tracks A and B are mutually exclusive as previously discussed in the Basic Position and Issue 1A above.

ICI: No, BellSouth cannot meet the requirements of section 271(c)(1) through a combination of both Track A and Track B. Congress envisioned two ways of authorizing BOC entry into the in-region interLATA market: (1) facilities-based competition via interconnection (i.e., Track A), or, (2) in the absence of qualifying requests, via an SGAT (i.e., Track B). These two tracks are mutually exclusive under the plain meaning of the statute.

MCI: No. Tracks A and B are mutually exclusive. More importantly, an SGAT cannot be used to supplement a Track A filing.

**MFS/WorldCom**: No, BellSouth may not combine the requirements of Track A and Track B to claim compliance. Because BellSouth has received interconnection requests under Track A, it may not use Track B. BellSouth has met neither the requirement of Track A nor Track B.

**Sprint**: No. Subparagraphs (A) and (B) of Section 271(c)(a) are mutually exclusive. Since BellSouth cannot meet the requirements of 271(c)(1)(B) it is clearly precluded from using a combination of Sections 271(c)(1)(A) and 271(c)(1)(B).

**TCG**: No. Section 271 does not permit BellSouth to meet the requirements of Section 271(c)(1) through a combination of Track A (Section 271(c)(1)(A)) and Track B (Section 271(c)(1)(B)).

**STAFF ANALYSIS**:

## INTERPRETATION OF THE ACT'S REQUIREMENTS

### SECTION 271 REQUIREMENTS

Section 271(c)(1) provides that a Bell Operating Company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) **or** subparagraph (B) of this paragraph for each State for which authorization is sought. (emphasis supplied)

### FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

In SBC the FCC concluded that Track B was only available to a BOC who had not received a qualifying request for access and interconnection. FCC 97-228,¶34. Further, in the Ameritech Order, the FCC stated that in order for it to approve a BOC's application to provide in-region interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) or 271(C)(1)(B). (EXH 1, FCC 97-298, ¶62)

### FPSC'S INTERPRETATION OF 271 REQUIREMENTS

The FPSC has not taken a position on this issue previously.

### SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE

The statute provides that a BOC meets the requirements of 271(C)(1) if it meets the requirements of subparagraph (A) or (B) not (A) and (B). It appears the FCC interprets this to mean that Track A and Track B are mutually exclusive. Staff agrees.

STAFF DISCUSSION OF POSITIONS

All the parties who take a position on this issue, including BellSouth, agree that BellSouth cannot meet the requirements of Section 271(c)(1)through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B)). (ACSI BR p.10; AT&T BR p.18; BST BR p.18; FCCA BR p.43; FCTA BR p.16; ICI BR p.26, MCI BR pp.16-17; Sprint BR p.1; TCG BR p.6; WorldCom BR pp.11-12). Staff agrees. As discussed in detail above, more than one unaffiliated competing provider in Florida has requested access and interconnection with BellSouth. BellSouth, therefore, is precluded from seeking interLATA authority under Track B. Further, the provisions of sections 271(c)(1)(A) and 271(c)(1)(B) are mutually exclusive. Accordingly, staff recommends that BellSouth cannot meet the requirements of Section 271(c)(1) through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B)).

Although BST agrees that it cannot combine tracks A and B, it goes on to argue that it can use the SGAT to demonstrate that checklist items are available even if it elects to file a track A application with the FCC. BST states that although the FCC declined to reach this issue in the SBC Oklahoma case, FCC Order at ¶59, the Department of Justice endorsed using a Statement to meet check list obligations under track A under certain circumstances. (BR p.19)

BST argues that the plain language of Section 271(c) supports the use of the SGAT in connection with Track A. BST states that 271(c)(1) sets forth the requirements that a BOC must meet to satisfy Track A or Track B. According to BST the next separate subsection, 271(c)(2), requires that access and interconnection that the BOC is "providing", meet the competitive checklist. BST concludes that there is nothing in the language of Section 271 to suggest that the Statement cannot be used to demonstrate the availability of checklist items that have been "provided" to an interconnector, that is, made available, but not actually furnished. Id.

BST asserts that the intervenors have argued that Ameritech prevents this result. In Ameritech, BST states, AT&T and other intervenors contended that in order for an item to be "provided" pursuant to Track A, it had to actually be furnished (i.e., used) by an ALEC. (citing FCC 97-298, ¶112). BST states that the FCC rejected the argument of AT&T and the other IXCs, and accepted the contention of Ameritech. (citing FCC 97-298, ¶110) Ameritech, however, did not have a State approved SGAT, and therefore did not propose the issue of a State approved SGAT as a means to demonstrate that the items were being made available in a concrete, legally binding manner. (BR p.20)

BST points out that the FCC stated in dictum that merely to "offer" an item was not enough, since the offer might not be backed up by the ability to provide the item. Id. BellSouth states that certain intervenors have argued that this dictum means that a State approved SGAT cannot be used to demonstrate the availability of a particular item if the BOC is filing an application under Track A. This contention, BellSouth argues, is belied by the facts: (1) Ameritech did not have a State approved SGAT, (2) Ameritech did not suggest to the FCC that it consider whether a State approved SGAT can constitute the sort of concrete binding obligation that will demonstrate availability. Moreover, BellSouth argues, in its dictum, the FCC did not make any reference whatsoever to a "State Approved SGAT", "state approved agreement", or a state approved "offer". Id. BellSouth asserts that the contention by certain intervenors that this is the meaning of the Ameritech decision is not supported by the language of that decision. Further, BellSouth argues, this contention is illogical. (BR pp.20-21)

According to BellSouth, the purpose of this proceeding should be to determine whether BellSouth has either furnished or made available the tools needed by new entrants in the local market to compete. This, BellSouth argues, necessitates that BellSouth's offerings be scrutinized. This scrutiny can be based upon a review of the Statement or by a review of the interconnection agreements, which, in BellSouth's case, contain the same offerings as those set forth in the SGAT. BellSouth believes that the SGAT is beneficial because it provides a comprehensive listing of all BellSouth's offerings it believes to be checklist compliant in one place. BellSouth argues that the utility of the SGAT was demonstrated during the hearing by the fact that Mr. Gillan testified that he relied considerably more on a review of the SGAT than on any Agreement in considering BellSouth's offerings. (Tr 1857-58) Further, Mr. Gillan admitted on the stand that "as an economist," that it made no difference whether the offerings scrutinized were contained in an SGAT or in an agreement. (Tr 1918-19)(BR p.21)

Finally, BellSouth argues that to the extent an SGAT, such as BellSouth's, incorporates the terms of arbitrated agreements, it is as concrete and legally binding as the agreements themselves. Even if BellSouth's SGAT were not drawn from contracts in actual existence, the fact of State approval, and BellSouth's reliance on that approval, would be more than adequate to make the offerings set forth in the SGAT the type of legally binding obligation that the FCC contemplated in Ameritech. (BR p.22)

AT&T, FCCA, ICI and MCI argue that Track A applicants cannot rely on a SGAT to demonstrate checklist compliance; rather, they must rely on state approved interconnection agreements. (AT&T BR pp.25-26; FCCA BR p.44; ICI BR p.18; MCI BR pp.17-18) According to AT&T, the FCC noted that a Track A applicant need not "actually furnish" each checklist item, but may, with regard to items not actually used by a competitor demonstrate that it is presently able to furnish such items upon request pursuant to state-approved interconnection agreements. (citing FCC 97-298, ¶110). AT&T asserts that the FCC specifically found that "the mere fact that a BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance." Therefore, BellSouth's proffered SGAT cannot be used to establish checklist compliance because BellSouth is proceeding, and must proceed, under Track A. (BR pp.25-26)

FCCA argues that to the extent BellSouth continues to argue that it may proceed under Track A, but fulfill some of Track A's requirements with an SGAT from Track B, this argument has been laid to rest in the Ameritech decision. In Ameritech, the FCC found that the two tracks were separate and that an SGAT, which is relevant only to Track B, could not be used to meet the requirements of Track A. Track A can be met only through the use of state-approved interconnection agreements. FCCA quotes the following from the Ameritech Order:

> Like the Department of Justice, we emphasize that the mere fact that BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance. To be "providing" a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item.
>
> . . .
>
> Reading the statute as a whole, we think it is clear that Congress used the term "provide" as a means of referencing those instances in which a BOC furnishes or makes interconnection and access available pursuant to state-approved interconnection agreements [Track A] and the phrase "generally offer" as a means of referencing those instances in which a BOC makes interconnection and

> access available pursuant to a statement of generally available terms and conditions. [Track B] A statement of generally available terms and conditions on its face is merely a general offer to make access and interconnection available... ¶¶110 and 114.

The FCCA concludes that the Ameritech decision makes clear that a SGAT is a document pertinent only to a Track B case. According to the FCCA, it cannot be used to meet the requirements of Track A because it is simply a general offer not a state-approved interconnection agreement. The FCCA argues that BellSouth's attempt to do so must be rejected. (BR p.44)

MCI argues that interpreting the Act to allow BellSouth to rely on an SGAT under Track A would destroy the requirement of full implementation of the fourteen point competitive checklist. According to MCI, Section 271(d)(3)(A)(I) requires that a BOC pursuing Track A must "fully implement the competitive checklist in subsection (c)(2)(B)." (citing FCC 97-298, ¶105) MCI asserts that the threshold requirements of subsection (d)(3)(A) require more than reciting the competitive checklist in a contract -- they require that the BOC be "providing access and interconnection pursuant to one or more agreements" that "ha[ve] fully implemented the competitive checklist." The Conference Report declares that the Congress meant what it said when it required real access and interconnection:

> The requirement that the BOC is "providing access and interconnection" means that the competitor has implemented the interconnection request and the competition is operational. This requirement is important because it will assist . . . in the explicit factual determination by the Commission under new section 271(d)(2)(B) that the requesting BOC has fully implemented the interconnection agreement elements set out in the "checklist" under new section 271(c)(2). (H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996). (BR pp.17-18)

MCI argues that the requirement that the checklist items be "fully implemented" through working "interconnection" assures that -- at a minimum -- the technological preconditions to local competition are present before the BOCs may compete in downstream markets. Id.

MCI states that the FCC reiterated in its Ameritech decision that Track A requires a BOC to be "providing" access and interconnection pursuant to the terms of the checklist. To provide an item, the FCC concluded, a BOC must make "that item available as a legal and a practical matter." (quoting FCC 97-298, ¶107). MCI states that the FCC made it clear that merely offering an item under an SGAT did not constitute providing the item and did not meet the requirements of Track A. (citing FCC 97-298, ¶110) (BR pp.19-20)

The arguments above can be summarized as follows: the intervenors believe an SGAT is only pertinent to a track B application; BellSouth is ineligible for track B; therefore, BellSouth may not rely on a SGAT to demonstrate compliance with the checklist. BellSouth, on the other hand, believes it is not precluded from using an SGAT to demonstrate checklist compliance in a Track A application.

Staff believes that the FCC did not have the precise issue of whether a State approved SGAT can be used to supplement a Track A application and demonstrate checklist compliance before it in the Ameritech decision. It is unclear whether the plain language in Section 271(c) contemplates BOCs using a state approved SGAT to support a Track A application. On the other hand, staff believes that when looking at the Act as a whole a state approved SGAT could be considered in a Track A application in certain circumstances. Staff notes, however, as discussed in issue 1.A. above, BellSouth has qualifying requests that if fully-implemented would satisfy all 14 points of the competitive checklist. Further, staff does not believe BellSouth has met the requirements of Section 271(C)(1)(A) nor does BellSouth have a state approved SGAT. Therefore, a decision on whether BellSouth can supplement a Track A application with an SGAT is neither necessary nor ripe for decision at this time. Staff will nevertheless address this issue briefly below.

Staff believes that a state approved SGAT can be used to show that checklist items are available under Section 271(c)(2)(B) whether the BOC proceeds under Track A or Track B.
This is not unlike having a tariff on file that lists what services are available. The inquiry does not end there, however, when determining whether the BOC is checklist compliant. The BOCs may not simply rely on the fact that checklist items are contained in a state approved SGAT or in a state approved interconnection agreement. They must show that they are actually providing the checklist items or that the items are functionally available. This is consistent with the overall goal of the Act which is to open all telecommunications markets to competition. (EXH 1, FCC 97-298, ¶10)

Staff does not believe, however, that a state approved SGAT should be the primary avenue for demonstrating checklist compliance in a track A application. The main objective of Section

271(c)(1)(A), track A, appears to be facilities-based competition; whereas, Section 271(c)(1)(B), is available absent a facilities-based competitor. Therefore, track A applicants should first demonstrate checklist compliance through state approved interconnection agreements. One example in which a state approved SGAT would be appropriate is where there may be numerous interconnection agreements and facilities-based competition exists, but none of the interconnection agreements contain Directory Assistance (DA). In this instance, staff believes a BOC should be able to demonstrate that DA is available through a state approved SGAT. Of course as discussed above, the BOC would also have to demonstrate that DA is functionally available.

The end result of the intervenors' interpretation appears to be that BOCs could conceivably have operational competitors in their region, but not be granted interLATA authority simply because a checklist item was not contained in an interconnection agreement. This result appears to be at odds with the overall goal of the Act. It is possible that a BOC could never gain interLATA authority under this scenario even though actual competition existed and all of the checklist items were functionally available.

Although staff believes BellSouth should be able to use a state approved SGAT to show that checklist items are available, BellSouth is not eligible to do so at this time. As discussed above, BellSouth has not met the requirements of Section 271(C)(1)(A), nor does BellSouth have a state approved SGAT.

## SUMMARY

Based on the foregoing, staff recommends that BellSouth cannot combine Track A and Track B to seek interLATA authority. Staff also recommends that BellSouth should be able to use a state approved SGAT to show that checklist items are available. BellSouth, however, is not eligible to do so at this time.

ISSUE 2: Has BellSouth provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(I) and applicable rules promulgated by the FCC? **(Norton)**

RECOMMENDATION: No. While BST has provided interconnection to a number of ALECs who have requested it, staff does not believe that BST has done so in full compliance with the requirements of the applicable sections of the Act or the FCC rules.

POSITION OF THE PARTIES

ACSI: No. BellSouth has not provided interconnection to ACSI pursuant to the Act and applicable rules in Florida.

AT&T: BellSouth has not provided such interconnection to AT&T.

BST: Yes. Interconnection Services are functionally available from BellSouth, and BellSouth has procedures in place for the ordering, provisioning and maintenance of its interconnection services. As of July 1, 1997 BellSouth has provisioned approximately 7,828 trunks to interconnect its network with the network of ALECs in Florida, and over 22,830 local interconnection trunks in its nine-state region.

FCCA: No. The testimony of the individual carriers in this case demonstrates that BellSouth is not providing interconnection in accordance with the Act and applicable rules.

FCTA: No. BellSouth has failed to meet its burden of demonstrating compliance with the Act and FCC rules.

ICI: No, BellSouth has not met the requirements of Section 271(c)(1)(A), although this is the only avenue available to it. The 1996 Act requires meaningful facilities-based competition for business and residential customers. BellSouth has not demonstrated that there currently exist in Florida competing providers of telephone exchange service providing service to both residential and business customers either exclusively over their own facilities or predominantly over their own facilities in combination with resale.

MCI: No. Among other things, BellSouth has not yet implemented any of MCI's pending requests for physical collocation; the terms and conditions for collocation arrangements are not nondiscriminatory; and BellSouth will not provide interconnection at local tandems. In addition, it is unclear whether BellSouth will provide the interconnection required to terminate calls to the customers of independent telephone companies where a single local calling area is served in part by BellSouth and in part by an independent company.

MFS/WorldCom: BellSouth has failed to provide interconnection with WorldCom and other carriers as is required by the Act, FCC Rules, and the applicable interconnection agreements.

Sprint: No. BellSouth has not provided interconnection: (1) at any technically feasible point; (2) at least equal in quality to that provided by itself; (3) on rates, terms and conditions that are just, reasonable and nondiscriminatory. It should be presumed that interconnection at switching points is technically feasible. BellSouth should have the burden of proof if it believes that a requested interconnection is not technically feasible. Once provided, an interconnection should be presumed to be technically feasible. There should be no discrimination in the interconnection allowed. Prices should be cost-based. There should be no restrictions on how interconnection can be used.

TCG: No. BellSouth failed to demonstrate that it provides network access and interconnection services to its competitors that are at least equal in quality to that provided by BellSouth to itself, its own customers, and its affiliates.

STAFF ANALYSIS:

## INTERPRETATION OF THE ACT'S REQUIREMENTS

### SECTION 271 REQUIREMENTS

Section 271(c)(2)(B)(I) contains the first checklist item, which addresses the provision of facilities-based interconnection. This section requires that interconnection must be provided or generally offered in accordance with Sections 251(c)(2) and 252(d)(1) of the Act. Section 251(c)(2) specifies what constitutes the provision of facilities-based interconnection, i.e., the transmission and routing of telephone exchange service and exchange access between the ALEC's network and that of the RBOC. Three additional criteria must also be met under this provision:

* The RBOC must provide interconnection at any technically feasible point within its network.

* The quality of the interconnection must be at least equal to that which the RBOC provides itself, an affiliate, a

subsidiary, or any other party to which it provides interconnection.

* Finally, interconnection must be provided at rates, terms and conditions that are "just, reasonable, and non-discriminatory," as specified in the carrier agreements as well as in Sections 251 and 252 of the Act.

Although collocation is not a separate checklist item, it is included as one of the six "duties" or obligations, along with interconnection, unbundled access, and resale, in Section 251(c). The collocation requirement consists of the duty to provide for physical collocation of ALEC equipment that is necessary for interconnection or access to UNEs at the RBOC premises, with rates, terms and conditions that are just, reasonable, and nondiscriminatory. Although physical collocation is the standard requirement, the Act allows for virtual collocation if the RBOC demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. Since Section 251(c)(2) requires that interconnection be provided at any technically feasible point in the network, a carrier's request for collocation would need to be satisfied, and proven to be operating pursuant to Section 252(c)(6) and individual carrier agreements, before the checklist items for either interconnection or unbundled network elements are satisfied.

No party asserted that collocation was not a requirement or that it should not be considered in this proceeding. Staff would note, however, that some parties addressed it in Issue 2 and others in Issue 3, which is understandable since it is an element in both. For purposes of this recommendation, staff has analyzed collocation in Issue 2. Our conclusions and recommendations on collocation would, however, apply to both interconnection (Issue 2) and access to UNEs (Issue 3).

Section 252(d)(1) of the Act consists of the pricing standards for interconnection and UNEs. It requires that the state commission determine just and reasonable rates for interconnection and for UNEs, and that the rates be based on cost and be non-discriminatory. The rates may also include a reasonable profit.

## FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

The FCC interpreted the above provisions of the Act, and set forth its own rules to implement them:

**§ 51.305:** reiterates the basic requirements articulated in the Act (Section 251(c)(2)), and requires specific actions or conditions be met. Among other things, this rule lists the minimum technically feasible points of interconnection within the LEC network, including local and tandem switches, the cross connect points that comprise collocation, and the signaling transfer points necessary for access to call-related databases. It also includes the points of access described in the section on unbundling requirements. (47 C.F.R. § 51.319)

The rule also defines the level of quality which can be considered at parity with the ILEC itself, or an affiliate. The FCC declared that, at a minimum, the ILEC should be required to design interconnection facilities to meet the same technical criteria and service standards that are used within the RBOC's own network. The FCC particularly noted that the level of service quality provided should not be considered only in terms of that which is perceived by end users, but should be considered in terms of that which is requested by the ALEC. The FCC also stated that the RBOC must provide both superior and inferior levels of service relative to itself, if requested by ALECs.

This rule also requires that the terms and conditions of interconnection, including provisioning periods, must be provided to all requesting carriers, and must be no less favorable than those which the ILEC provides to itself.

In addition, a carrier cannot purchase interconnection pursuant to Section 251 (c)(2), i.e., at cost-based rates, for the sole purpose of originating and terminating interexchange traffic on the ILECs' network, but rather must purchase it for the purpose of providing local service and exchange access to others as well. In other words, an ALEC who is an IXC cannot purchase interconnection solely in order to bypass switched access rates in favor of the cost-based local interconnection rates.

Previously successful interconnection at a given point is sufficient to prove technical feasibility. If an RBOC denies a requested point of interconnection, it must prove to the state commission that it is not technically feasible.

Finally, two-way trunking is required upon request if technically feasible.

§ 51.321: outlines permissible and required methods to obtain interconnection and access to UNEs per Section 251 of the Act. Feasible methods include physical and virtual collocation, as well as meet point arrangements. If an RBOC wishes to make a claim to a state commission that physical collocation is not feasible due to floor space limitations, it must submit detailed floor plans or diagrams.

§ 51.323: sets forth numerous standards for physical and virtual collocation.

The FCC also identified Total Element Long Run Incremental Cost (TELRIC) as the appropriate cost methodology for setting rates for interconnection and UNEs, based on the costing requirements of the Act. As discussed below, this provision was overturned by the Eighth Circuit.

*Eighth Circuit Order*

The Eighth Circuit addressed several aspects of the FCC Interconnection order:

It upheld the FCC's requirement that technical feasibility is to be determined without regard to economic feasibility, on the basis that the cost of interconnection or UNEs would be taken into account when determining the just and reasonable rates, terms and conditions of service. (US 96-3321, p.31)

It overturned the FCC's Rules 47 C.F.R. § 51.305(a)(4) (interconnection) and § 51.311(c)(access to UNEs) with respect to the level of service quality, stating the level of service quality does not have to be superior to that which the RBOC provides itself. Instead, the Eighth Circuit ruled that the Act requires only that the level of service quality be equal. (US 96-3321, p.35)

The Eighth Circuit also overturned the FCC's TELRIC pricing policy, on the basis that setting cost standards such as TELRIC went beyond the scope of the FCC's authority.

*FCC Ameritech Order*

In its order on Ameritech's Michigan 271 filing, the FCC denied checklist item #1 on interconnection even though the Michigan PSC had approved it. (EXH 1, FCC 96-298, ¶224) The FCC interpreted Section 271(d)(3) to mean that the burden is on the RBOC to affirmatively prove that it has satisfied all the statutory criteria. The FCC said:

> ... the ultimate burden of proof with respect to factual issues remains at all times with the BOC, even if no party opposes the BOC's application.

The FCC also stated, however, that once the RBOC has made its showing, the burden of production then falls to the ALECs to show that the application does not satisfy the requirements of section 271. (Ibid., ¶43)

Furthermore, the FCC was concerned that RBOC compliance, once determined, continue after its entry into the interLATA market. It listed several ways this could be achieved. First, the processes requiring RBOC cooperation such as interconnection and access to UNEs, should be shown to be sufficiently available, tested and monitored. Second, appropriate mechanisms such as performance standards and reporting requirements should be used to detect compliance or lack thereof. Finally, the FCC stated that it might impose, or the BOC could volunteer, certain conditions to ensure continued compliance. The FCC stated that it must be confident that the picture it sees as of the date of filing "contains all the necessary elements to sustain growing competitive entry into the future." (Ibid., ¶22)

The FCC concluded that Ameritech had not proven that it is providing interconnection in accordance with the Act in that the data provided was inadequate to compare the quality of interconnection provided to other carriers to that which it provides itself. (ibid.., ¶224) Specifically, the FCC ruled that Ameritech's data did not contain sufficient information on the actual level of trunk blockage and rates of call completion. Moreover, even using just the information provided by Ameritech, the FCC concluded that Ameritech's interconnection facilities do not meet the technical criteria and service standards that Ameritech uses within its own network as required by Section 251(c)2)(C). This conclusion was based on the difference in blocking rates between ALEC interconnection trunks and Ameritech's own retail trunks. The FCC also questioned whether Ameritech was providing interconnection arrangements on nondiscriminatory terms and conditions under Section 251(c)(2)(D).

The FCC noted that if a call routed to a particular trunk group is blocked, the call may or may not be ultimately completed depending in part on whether redundancy is incorporated within the network architecture. (Ibid., ¶234) It also noted record evidence indicating that customers of ALECs had reported blocking of in-bound calls, suggesting that it could have created unfavorable marketplace perceptions of the service ALECs provide. (Ibid., ¶235)

In its order, the FCC stated that Ameritech provided trunk blocking data in such a way that it could not be validated by either the FCC or Ameritech's competitors. (Ibid., ¶232) The FCC concluded that call completion data would be useful in determining the degree to which a BOC provides interconnection at parity in accordance with statutory requirements. (Ibid., ¶235) It also concluded that such data would be more persuasive if provided over a "sufficiently long time to establish stable trends." (Ibid., ¶244)

The FCC specifically addressed the blockage problems reported by ALECs, noting that when blockage problems occur, they may be remedied by modifying both LEC and ALEC network architectures. The FCC ruled that establishing appropriate trunking architecture and proper interconnection arrangements is the responsibility of *both* carriers. However, in connection with statutory nondiscrimination requirements, the FCC stated that Ameritech has an obligation to provide sufficient information about its network to remedy network blockage that occurs within Ameritech's network, but which affects both its and ALECs' customers. The FCC stated that Ameritech has an obligation to cooperate with ALECs to remedy network blockage. (Ibid., ¶246)

In addition to its rulings on interconnection, the FCC continues to advocate TELRIC-based prices for purposes of 271 filings. The FCC acknowledged that the Eighth Circuit ruled it did not have jurisdiction to establish national cost and pricing rules, but noted that the Court only addressed the issue on jurisdictional grounds, and not on its merits nor on the proper meaning of the statutory language. (Ibid., ¶283) Arguing that the cost-based standard is contained in a federal statute, the FCC asserts that it must have a nationwide uniform meaning. Therefore, the FCC concludes, pursuant to its responsibility under Section 271, it must apply uniform principles to give content to the cost-based standard in the competitive checklist for each application. (Ibid., ¶285-286)

To that end, the FCC stated that, for purposes of checklist compliance, prices for interconnection and UNEs must be based on TELRIC principles. However, it acknowledged that "it is not the label that is critical in making our assessment of checklist compliance, but rather what is important is that the prices reflect TELRIC principles and result in fact in reasonable, procompetitive prices." (Ibid., ¶290) The FCC wants the RBOCs, the Department of Justice (DOJ), and the state commissions to provide information on, and address the application of, TELRIC principles when RBOCs file for 271 authority with the FCC. (Ibid., ¶291, Footnote 749 @ p.151) It specifically stated that geographic deaveraging is required for interconnection and UNEs to meet the requirements of 271 for those checklist items, "in order to account for the different costs of building and maintaining networks in different geographic areas of varying population density." (Ibid., ¶292)

## FPSC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

In Florida, the parties in the BST/AT&T and MCI arbitration proceedings agreed to withdraw the issue on the appropriate trunking arrangements for local interconnection. They had reached an agreement on this issue, which was reflected in their arbitrated agreements. (EXH 13, 14) The arbitrated agreements approved by this Commission provide for two-way trunking. Staff would note that in Florida's state proceedings (DN 950985-TP), the Commission required that BST provide 1) interconnection, trunking and signaling arrangements at both the tandem and end office levels; 2) the option of interconnecting via one-way or two-way trunks; and 3) mid-span meets where economically and technically feasible. (EXH 1, Order No. PSC-96-0045-FOF-TP)

With respect to collocation, this Commission approved the use of BST's Telecommunications Handbook for Collocation for the interim, until permanent cost-based rates are set for physical collocation. For virtual collocation, the Commission required the use of the rates, terms and conditions in BST's intrastate Access Tariff until permanent rate are set. BST was ordered to file a Total Service Long Run Incremental Cost (TSLRIC) study. In addition, the ALECs are required to bear the costs of conversion from virtual to physical collocation.

The approved provisioning periods for collocation were:

Physical - 3 months
Virtual - 2 months

BST is to demonstrate to this Commission on a case-by-case basis if these timeframes are not sufficient.

In addition, the Commission specifically allowed MCI (in DN 960846-TP) to:

* interconnect with other collocators who are interconnected with BST in the same central office;

* purchase unbundled dedicated transport from BST between the collocation facility and MCI's network;

* collocate subscriber loop electronics in a BST central office;

* select virtual over physical collocation, where space and other considerations permit.

**SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE**

The 271 checklist is structured in a way that requires evaluation of interconnection arrangements in Item #1 (this Issue 2). However, the pricing arrangements for the traffic carried over interconnection trunks is the subject of the Reciprocal Compensation checklist item #13 (Issue 14). The only pricing that staff will address in this issue will be with respect to collocation, as that is addressed in its entirety in this issue.

Staff agrees with the FCC's interpretation of technical feasibility and the Eighth Circuit's endorsement of it. (US 96-3321, p.31)

Staff also agrees with the Eighth Circuit's ruling on quality of service, and would note that ALECs desiring a higher level of quality than that which BST provides itself could request that BST provide it via the Bona Fide Request (BFR) process.

Staff does not believe that the FCC can or should reinstitute TELRIC pricing requirements. We continue to believe that TSLRIC is preferable. In Florida's arbitration proceedings, the Commission determined that the "scorched node" approach inherent in the FCC's TELRIC methodology is inappropriate for pricing because it does not adequately reflect either the ILEC's current or its prospective cost structure. While the "scorched node" approach incorporates cost components based on the current location of existing LEC wire centers, all other cost components reflect a theoretical construct based on future technology. The Commission endorsed the TSLRIC based forward-looking approach because it considers the current architecture and future replacement technology. (Order No. PSC-96-1579-FOF-TP, p.24)

Therefore, to the extent permanent rates have been set by this Commission, staff believes that they comply with the requirements of Section 252(d)(1) of the Act, and staff will endorse BST's use of those rates for purposes of checklist compliance. For those items for which only interim rates have been set thus far, the Commission has required TSLRIC studies to be filed in order to establish permanent rates.

In this recommendation, staff will consider the interconnection issue and parties' positions in terms of the following:

- Whether BST has implemented all the interconnection requirements pursuant to Section 271(d)(3) of the Act; that is, whether interconnection trunks are available in sufficient quantities, and whether interconnection has been provided upon request at any technically feasible point.

- Whether the interconnection arrangements in ALEC agreements, approved pursuant to Sections 251 and 252 of the Act, have been provided in a complete and timely fashion;

- The degree to which the ALEC is able to operate utilizing the provisions of its interconnection agreement;

- Whether the rates, terms and conditions for interconnection, specifically collocation, have been set in conformance with the pricing requirements of the Act. This would mean, where prices are proposed in the SGAT, that this Commission has not set pursuant to Section 252 (d)(2), BST should have filed TSLRIC studies to support the rates in the SGAT.

## STAFF DISCUSSION OF POSITIONS

Some parties use the term "interconnection" in its generic sense, meaning any form of connection to the ILEC network, including via resale and unbundled elements. For this issue it means the trunking facilities used to allow the exchange of local traffic between BST and ALECs, and which are terminated at specified points on the network, including tandem and end office switches, as well as collocation arrangements.

The record reflects that BST is providing local interconnection facilities to ALECs in Florida, and ALECs are providing local service by means of these facilities. However, as discussed below, BST has to date been unable or unwilling to meet all the provisions of its agreements under the requirements of the Act.

*BST POSITION*:

BST states that it has complied with the requirements of the Act in that interconnection services are functionally available. (Milner TR 765) In addition, BST states that procedures are in place for ordering, provisioning and maintenance of its interconnection services plus technical service descriptions outlining its local interconnection trunking arrangements and switched local channel interconnection. (Scheye TR 720) It has approximately 7828 interconnection trunks in service. (TR 720)

BST also states that Section I of its SGAT provides for complete and efficient interconnection:

* trunk termination points at BST tandems and end offices;

* trunk directionality allowing one-way or two-way trunk groups depending on the type of traffic;

* trunk termination via physical or virtual collocation or purchase of facilities by either company;

* intermediary local tandem switching and transport services for interconnection of ALECs to each other;

* interconnection billing.

* the Bona Fide Request process for interconnection arrangements that are not included in the SGAT. (Scheye TR 399-402)

BST also states that it has successfully tested its capabilities to provide each of the interconnection services contained in its SGAT. (Milner TR 843)

BST asserts that its interconnection rates comply with this Commission's orders and the cost-based standards of Section 252(d)(1). All the transport and termination rates, including rates for intermediary handling of local traffic, that were approved in Florida proceedings, were included in the SGAT. (BR p. 24) BST states that no party presented credible evidence to rebut BST's "proven ability to offer this checklist item." (BR p.24)

With respect to collocation, BST also states that it will provide virtual where physical is impractical for technical or space limitation reasons. (Scheye TR 409-410)

*INTERVENOR POSITIONS*:

No ALEC gave unequivocal endorsement to BST's provision of interconnection for purposes of compliance with Checklist Item #1. ACSI states that BST has not provided interconnection to it in compliance with the Act and applicable rules in Florida. (BR p.11) As a reseller in Florida, and a small user of UNEs in other states, ACSI does not further address interconnection in the context of Checklist Item #1. (Falvey TR 2287-2290) Given its experience, however, ACSI states that BST's request is premature.

AT&T states that BST has not provided interconnection to AT&T. AT&T has not begun operations in Florida as yet. Witness Hamman stated that AT&T will not come to Florida until he knows the systems in Georgia will work. (EXH 94, p.37)

Sprint has adopted the brief of FCCA for this issue, and did not provide testimony in this proceeding on Interconnection.

*1. Collocation.*

AT&T states that although its Agreement contains provisions for collocation, they are not yet implemented. AT&T states that until the procedures set forth in the document are finalized and requests for collocation are processed, it is too soon to know whether BST can meet the Act's requirements. (Hamman TR 2644) AT&T asserts that until all procedures are developed, and in place, and tested, so that BST can promptly provide interconnection to any requesting ALEC, BST is not providing interconnection at the same level of quality which it provides to itself. (TR 2647)

MCI has four orders pending for physical collocation in Florida. (Gulino TR 3160) Firm orders were placed in April 1997. (TR 3194) FPSC Order No. PSC-96-1579-FOF-TP requires that physical collocation requests be completed in three months. The MCI/BST Interconnection agreement requires that BST must provide collocation within 90 days of the firm order. (EXH 14, Att. V, p. 8) BST has missed the deadline on all four requests. (TR 3160) BST is therefore not in compliance with the MCI agreement.

In addition, MCI argues that collocation is a primary method of interconnection and a major way that carriers can compete with BST. (Gulino TR 3129) Competitors need reliable and fixed time intervals for provisioning collocation in order to plan and market. (Gulino TR 3130) BST's proposed SGAT has no fixed intervals for provisioning collocation. (Gulino TR 3130-31) It is not clear that BST could meet the time intervals even if the SGAT contained them since BST has not met the collocation terms of its agreement with MCI. (BR p.23)

MCI also states there are other implementation issues relating to collocation, some of which will not arise until after it is actually implemented. One example is the placing of unbundled loops and ports at collocations. At hearing, BST witness Scheye could not respond to a question with respect to BST's ability to place a port at a collocation saying there was no witness to answer at that level of specificity. He also stated that it had never been requested. (TR 584) In its brief, MCI noted that until physical collocations are in place, no order will be placed for loops and ports. (BR p.23)

According to MCI, another problem is that BST will make the determination of whether a would-be competitor will be allowed to have physical or virtual collocation. (Gulino TR 3133) Witness

Gulino argues that since the process will be controlled by BST at every step of the way, there is opportunity and incentive for BST to use it to its advantage. (TR 3133) For example, Gulino states that BST has proposed that ordering intervals and other important items be determined pursuant to BST's Collocation Handbook, which BST reserves the right to change at any time since it is not part of an interconnection agreement or the proposed SGAT. MCI states that, absent any controls, BST would be able to delay the deployment of MCI facilities. (Gulino TR 3133-34)

MCI also argues that BST's policy of requiring ALEC technicians to be escorted by BST personnel at physical collocation sites adds unnecessary time and expenses to routine maintenance and repairs on collocated equipment. MCI also states it should not be at the mercy of BST's escort schedule. (Gulino TR 3134-35)

MCI also notes BST's position that it is under no obligation to combine UNEs at an ALEC's virtual collocation facilities (to which only BST employees have access). (Scheye TR 584-587).

WorldCom states that it has attempted to implement collocation according to its agreement in Miami. It has experienced "delays, missed dates, surprise changes, and more delays." (EXH 116, p.48; EXH 117, p.163A)

Based on the parties' positions above, the primary problem with physical collocation to date is that no requests have been implemented. As noted above, BST has been unsuccessful in meeting the required timeframes in its agreements, and based on the record, it does not appear that this situation will change. To date, only one physical collocation arrangement has been completed, and the record shows that at this point in time, BST is not providing physical collocation to ALECs at parity with the manner in which it provides it to itself or its affiliates. BST has made no showing before this Commission as to why it cannot meet the timeframes set by this Commission or in its ALEC agreements with MCI and AT&T, a condition set forth in Order No. PSC-96-1579-FOF-TP.

A major impediment to fulfilling the requirements of the Act is the current "Catch 22" situation with respect to virtual collocation. By definition, virtual collocation requires that only BST personnel have access to the ALEC's collocation space. Thus, only BST can actually perform the functions at the collocation necessary to establish and provide service to an ALEC's customers. MCI states that a collocation arrangement is one of the most important ways from an engineering perspective that an ALEC can compete with BST. (Gulino TR 3129) BST has committed only that it will negotiate with ALECs pursuant to its Bona Fide Request (BFR) process in an attempt to establish so-called "glue" charges for combining UNEs at virtual collocations. BST even then states that it will not commit to providing the combining activity. (Scheye TR 584-86; 670-71)

Therefore, since the vast majority of today's collocation arrangements are virtual, ALECs are faced with a situation in which they must either pay the "glue" charge or wait until BST completes ALEC orders for physical collocation arrangements. (EXH 29) At hearing, BST witness Scheye offered another alternative, i.e., don't utilize collocation arrangements. (TR 672-73)

Staff views this position as unacceptable. Even witness Scheye admitted that collocation is required for checklist compliance for interconnection and access to UNEs. (TR 717) The glue charge itself is the subject of much dispute since the Act requires that interconnection and UNE rates be based on cost. (Section 252(d)(1)) In addition, MCI states that the glue charge is in direct violation of its Agreement with BST. (MCI Interconnection Agreement, Att. III, § 2.6; BR p.25) Even if the pricing issues are resolved in the near term, the problem still remains with respect to the length of time required for BST to establish physical collocations, and thus the inability for ALECs to be able to compete meaningfully in the marketplace. BST has demonstrated no willingness in this proceeding to address this issue in a cooperative fashion. Staff believes that it has the responsibility to do so. Until that time, BST, under its own definition, remains out of compliance with the requirements of the Act.

There are also problems associated with collocation in the SGAT. First, there are no provisioning intervals even though they were part of the arbitration agreements. (Scheye TR 574-75) BST witness Milner provided supporting material to the SGAT as part of his testimony. This back-up to the SGAT contains a provision that states that collocation should be provided in three months. (Milner TR 885-86) However, that language is not contained in the SGAT itself nor in the Collocation Handbook. The purpose of the SGAT, according to BST, is to provide an opportunity for a carrier to take service without having to go through negotiation. (TR 390) Staff believes that such ALECs would want to know the provisioning period for a collocation arrangement ordered out of the SGAT.

Second, current collocation prices are interim under the terms of Order No. PSC-96-1579-FOF-TP. Witness Scheye stated, however, that BST does not plan to alter the prices in the SGAT after permanent rates are set unless ordered to do so by this Commission. (TR 577)

Third, the interim Collocation rates approved by the Commission were those contained in the Collocation Handbook included in the record in that arbitration proceeding. (Order No. PSC-96-1679-FOF-TP) Rates for the SGAT were included in a price list shown as Attachment A to the SGAT, and included as an attachment to witness Scheye's testimony. (EXH 19) The collocation rates are different, and in most cases higher than, those approved in Order No. PSC-96-1579-FOF-TP. In response to cross examination by AT&T at hearing, witness Scheye said the reason for the change in rates was "additional cost work" that had been done. (TR 668-669) BST did not include that cost support in its filing in this case.

Moreover, BST has filed cost data in the BST arbitration cases pursuant to order to develop permanent rates. However, BST did not base the proposed rates in the SGAT on those cost studies. (Scheye TR 613-14) Thus, the collocation rates BST now proposes to use in the SGAT are based on cost studies other than those submitted in support of permanent rates in its arbitration proceeding. Since the cost data for the proposed SGAT rates was not approved by, or even presented to, this Commission as appropriate pursuant to Section 252(d)(2) in this proceeding, the rates cannot meet the requirements of the Act.

MCI witness Gulino also identified some potential collocation problems with respect to power supply and escort requirements. (TR 3179; 3184-90) These were discussed at hearing. Staff believes that these problems do not constitute a problem with the SGAT per se. If any or all of these problems arise once actual experience is gained with physical collocation, and if they cannot be resolved, they would appropriately be brought to this Commission which could order changes made to the SGAT, as needed.

### 2. *Network Blockage and End Office Trunking.*

FCTA states that BST will not provide MediaOne with end office trunking. This provides Media One with a single point of failure, i.e., the access tandem, in the network. (EXH. 86, p.6) In addition, Media One has filed a complaint with this Commission concerning excessive outages. (Ibid., p.7)

TCG states that BST fails to provide equal quality interconnection to TCG by improperly undersizing interconnection trunks to TCG, which causes network congestion and call blocking problems. (Hoffmann TR 3427) TCG states that BST is too slow in augmenting the number of trunks required to handle increases in traffic flowing from BST to the TCG switch. Thus, traffic destined